

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOSEPH SMITH and RONALD  
RAISER,

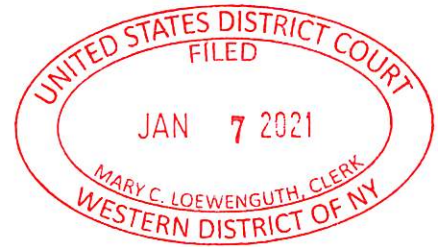
Plaintiffs,

v.

CITY OF BUFFALO, SHAWN ADAMS,  
JOE COOK, DANIEL DERENDA,

Defendants.

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17-cv-639 (JLS) (MJR)

### **DECISION AND ORDER**

Plaintiffs Joseph Smith and Ronald Raiser commenced this action against Defendants City of Buffalo, Shawn Adams, Joe Cook, and Daniel Derenda on July 12, 2017, raising claims under 42 U.S.C. § 1983 related to the shooting and death of a pet dog in Summer 2014.<sup>1</sup> *See* Dkts. 1, 23.<sup>2</sup> After answering the amended complaint on June 7, 2018, Defendants moved to dismiss for failure to state a claim on October 30, 2019. Dkts. 25, 26, 27, 40. Plaintiffs opposed the motion to dismiss on December 2, 2019. Dkt. 45. And Defendants replied in further support of their motion on December 13, 2019. Dkt. 46.

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<sup>1</sup> The Court refers only to the remaining claims and defendants relevant to this decision and order.

<sup>2</sup> Plaintiffs filed an amended complaint on May 17, 2018. *See* Dkt. 23.

This Court<sup>3</sup> referred this case to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. §§ 636(b)(1)(A) and (B). Dkt. 10. On September 29, 2020, Judge Roemer issued a Report and Recommendation (“R&R”), recommending that this Court grant Defendants’ motion<sup>4</sup> in part, with respect to all claims against Defendant Derenda, and otherwise deny Defendants’ motion. Dkt. 57, at 1, 18.

Defendants objected to the R&R on October 13, 2020. Dkt. 58. Plaintiffs responded in opposition on October 23, 2020, but did not file their own objections. Dkt. 60. They therefore did not object to the recommendation that the Court grant Defendants’ motion with respect to Defendant Derenda. *See id.* Defendants replied in further support of their objections on November 3, 2020. Dkt. 61.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). It must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to

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<sup>3</sup> Hon. Lawrence J. Vilardo, who was originally assigned to this case, entered the dispositive referral to Judge Roemer. Dkt. 10. On January 6, 2020, this case was reassigned to the undersigned. Dkt. 49.

<sup>4</sup> Judge Roemer converted Defendants’ motion to dismiss for failure to state a claim to a motion for summary judgment. *See* Dkt. 57, at 1, 3 n.2. Defendants objected to this conversion. *See* Dkt. 58, at 3-4. As explained below, the Court does not resolve that objection at this time.

review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

The Court studied the R&R and the briefing on Defendants' objections. Based on that review and absent any objections, the Court accepts and adopts Judge Roemer's recommendation to grant Defendants' motion with respect to Defendant Derenda, and dismisses all claims against him.

The Court's review of the remainder of the R&R—including its *de novo* review of Defendants' objections—is not yet complete. For that reason, and because the Court concludes that additional mediation could foster settlement of the remaining claims, the Court orders the parties to re-commence mediation and holds its review of the remaining portions of the R&R in abeyance.

### **CONCLUSION**

For the reasons stated above and in the R&R, the Court grants, in part, Defendants' motion (Dkt. 40) with respect to Defendant Derenda and dismisses all claims against him. The Clerk of Court shall terminate Defendant Derenda from this case.

The Court holds in abeyance its review of the remainder of the R&R—specifically, the recommendations with respect to Defendants' motion regarding the claims against Defendants City of Buffalo, Cook, and Adams. The Court does not resolve Defendants' objections to the R&R at this time.


The Court orders the remaining parties—Plaintiffs and Defendants City of Buffalo, Cook, and Adams—to re-commence mediation pursuant to Section 2.1.B of this District’s Alternative Dispute Resolution Plan. The following deadlines apply:

- Any motion for relief from this order to re-commence mediation is due by **January 21, 2021**;
- A stipulation selecting the mediator, if necessary, is due by **January 28, 2021**; and
- The first mediation session pursuant to this order shall occur by **February 26, 2021**.

The parties shall file a joint status report by **March 8, 2021**.

SO ORDERED.

Dated: January 7, 2021  
Buffalo, New York

  
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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE